

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

VILATA M. JAMES,	)	
	)	C.A. No. 01C-05-032 (JTV)
Plaintiff,	)	
	)	
v.	)	
	)	
GORDON R. COLLISON, JR., and	)	
DEL MAR APPLIANCE OF	)	
DELAWARE, INC., a Delaware	)	
corporation,	)	
	)	
Defendants.	)	

*Submitted: September 1, 2006*

*Decided: January 31, 2007*

Scott E. Chambers, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Brian T. McNelis, Esq., Young & McNelis, Dover, Delaware. Attorney for Defendant.

*Upon Consideration of Plaintiff's  
Motion For Costs and Expert Witness Fees*

**GRANTED in Part**

**DENIED in Part**

**VAUGHN, President Judge**

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### **ORDER**

Upon consideration of the plaintiff's motion for costs and expert witness fees and the defendants' response thereto, it appears that:

1. Vilata M. James, the plaintiff, has filed a motion for costs and expert witness fees pursuant to Superior Court Civil Rule 54 and 10 *Del. C.* § 5101.

2. The plaintiff filed a personal injury action against Gordon R. Collison, Jr. and Del Mar Appliance of Delaware, the defendants. Trial concluded on July 25, 2006 with the jury returning a verdict in favor of the plaintiff in the amount of \$25,000.

3. The plaintiff has requested the following costs be reimbursed under the rule and the statute:

- a. Prothonotary filing fees - \$125;
- b. Sheriff of Kent County - \$60;
- c. Copy of Kent General Hospital emergency room records - \$42.05;
- d. Copy of arbitration transcript - \$77.70;
- e. Expert witness fee paid to Dr. Richard P. DuShuttle for his video trial deposition - \$950;
- f. Videotaping of Dr. DuShuttle's trial deposition - \$490;
- g. Copy of Dr. DuShuttle's medical records - \$29;
- h. Expert witness fee paid to Steven Goldschlager, D.C. - \$400;
- I. Transcript of Dr. Goldschlager's trial deposition - \$230.20;
- j. Transcript of Dr. DuShuttle's trial deposition - \$296.32;
- k. Additional filing fee required by Kent County Prothonotary - \$225;
- l. Copy of Dr. Kumar's medical records - \$29.

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In total, the plaintiff is asking for \$2,954.27.

4. The defendants have taken exception to some of the plaintiff's requests. Because the arbitration transcript, the transcript of Dr. DuShuttle's trial deposition, and the transcript of Dr. Goldschlager's trial deposition were not entered into evidence, the defendants claim that the costs are not recoverable. The defendants also assert that the plaintiff is not permitted to recover the costs for photocopying, including the copy of Dr. DuShuttle's medical records, the copy of Kent General Hospital emergency room records, and the copy of Dr. Kumar's medical records. Defendants assert that the costs should be reduced by \$704.72.

5. The prevailing party in a civil action is entitled to be awarded costs against the adverse party.<sup>1</sup> Under Superior Court Civil Rule 54(f), "the fees paid court reporters for the court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence." The arbitration transcript was not entered into evidence and, therefore, is not a taxable cost. The amount requested by the plaintiff will be adjusted as to the transcript fee of \$77.70.

6. The plaintiff has also requested reimbursement for the video deposition and transcript of Dr. DuShuttle. However, previous decisions by this Court have concluded that awarding costs for the videotaping of a deposition introduced at trial and the preparation of the transcript are duplicative and, therefore, both are not permitted.<sup>2</sup> Because the plaintiff introduced Dr. DuShuttle's video deposition at trial, she is not permitted to be reimbursed for the transcript. Thus, the amount requested

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<sup>1</sup> 10 Del. C. § 5101.

<sup>2</sup> *Cimino v. Cherry*, 2001 Del. Super. LEXIS 181, at \* 9 (citing *Cubberly v. Orr*, 1995 Del. Super. LEXIS 469, at \* 6 and *Bejger v. Shreeve*, 1997 Del. Super. LEXIS 306, at \* 11).

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by the plaintiff will be further adjusted as to the transcript fee of \$296.32.

7. The plaintiff has requested reimbursement for photocopying of medical records. I know of no provisions or case law to support the plaintiff's position that photocopying is a taxable cost under Rule 54 and plaintiff has not presented any to the Court. The Court will further adjust the amount requested by plaintiff to exclude the copies of the Kent General Hospital emergency room records, the copy Dr. DuShuttle's medical records, and the copy of Dr. Kumar's medical records for a total of \$100.05.

8. The final disputed cost is for the transcript of Dr. Goldschlager's trial deposition which was read in during trial. I find that the \$230.20 for the transcript to create a record in lieu of his live appearance is reasonable and will be awarded as costs pursuant to Rule 54.

9. Therefore, the plaintiff's motion is ***granted in part*** and ***denied in part***. Fees and costs are awarded in the amount of \$2,480.20.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.  
President Judge

oc: Prothonotary  
cc: Order Distribution  
File